

**CITY OF CHESTERFIELD
BOARD OF ADJUSTMENT
MEETING SUMMARY
Thursday, November 4, 2010**

The Board of Adjustment meeting was called to order at 7:00 p.m. on Thursday, November 4, 2010 by Ms. Laura Lueking, Chair of the Board of Adjustment.

I. Introduction of Board and City Staff

The following individuals were in attendance:

Ms. Laura Lueking, Chair
Ms. Marilyn Ainsworth
Ms. Melissa Heberle
Mr. Leon Kravetz
Mr. Gerald Schwalbe, Alternate

Councilmember Connie Fults
Mr. Harry O'Rourke, representing City Attorney, City of Chesterfield
Ms. Aimee Nassif, Planning & Development Services Director, City of Chesterfield
Ms. Kathy Reiter, Administrative Secretary
Court Reporter, Midwest Litigation Services

II. Approval of May 6, 2010 Meeting Summary

Marilyn Ainsworth made a motion to approve the Meeting Summary. The motion was seconded by Leon Kravetz. Upon roll call, the vote was as follows:

Marilyn Ainsworth	Yes
Melissa Heberle	Yes
Leon Kravetz	Yes
Gerald Schwalbe	Yes
Laura Lueking	Yes

The motion passed 5 to 0.

III. Request for Affidavit of Publication

The Chair noted that the Affidavits of Publication and exhibits for the Petitions had been placed on the dais.

IV. Public Hearing Items:

The Chair read the Opening Comments for the Public Hearings.

Chair Laura Lueking requested that B.A. 06-2010 16081 Clarkson Woods Drive (Clarkson Woods Plat 1 Trustees) be heard first since the rest of the petitions all pertain to the same subdivision. Leon Kravetz made a motion to hear B.A. 06-2010 first; the motion was seconded by Melissa Heberle and passed by a voice vote of 5 to 0.

E. B.A. 06-2010 16081 Clarkson Woods Drive (Clarkson Woods Plat 1 Trustees): A request for a variance from Section 1003.168C.7 of the City of Chesterfield Zoning Ordinance to permit a nine (9) foot tall subdivision monument sign in the Clarkson Woods Subdivision in lieu of the six (6) foot height restriction and for said sign to maintain a zero (0) foot setback in lieu of the required twenty (20) foot setback as established in St. Louis County Ordinance Number 6228. (20T610707)

Staff Presentation:

Ms. Aimee Nassif, Planning & Development Services Director for the City of Chesterfield, outlined the exhibits supporting the request for a variance from Section 1003.168C.7 of the City of Chesterfield Zoning Ordinance to permit a nine (9) foot tall subdivision monument sign in the Clarkson Woods Subdivision in lieu of the six (6) foot height restriction and for said sign to maintain a zero (0) foot setback in lieu of the required twenty (20) foot setback as established in St. Louis County Ordinance Number 6228.

Ms. Nassif gave a PowerPoint presentation showing photos of the site and stated the following:

- There are four monument signs at the two entrances into the Clarkson Woods subdivision, which were erected when the subdivision was first developed prior to the incorporation of the City of Chesterfield.
- In 1996, MoDOT acquired additional right-of-way from the subdivision for road widening of Clarkson Road. At that time, they removed one of the monument signs, and replaced it with a sign that does not match the other three signs. .
- The petitioner is requesting that they be allowed to erect a new sign which is identical in shape, size and material to the other signs.
- The first request specifically will be to permit a sign which exceeds the height requirement. The height requirement currently is six (6) feet. One section of the proposed sign is seven (7) feet tall and will have a light standard on top of it making the total height about nine (9) feet.
- The second request will be to maintain a zero (0) foot setback in lieu of the 20 foot setback requirement. In essence, they will be requesting that the new sign be right up against the property line, generally in the location of where it was previously. It would still be located outside the sight distance triangle so it would not cause any sight distance issues.
- The applicant came in for a sign permit, which was rejected by the Department of Planning and Public Works due to the setback variance and the issue with the height.

Laura Lueking asked if the City of Chesterfield height requirements are lower than what the County's requirements were at the time the signs were erected. Ms. Nassif responded that they are about the same but Staff does not have a copy of the permit approved by St. Louis County. She added that the City of Chesterfield has adopted the sign code from St. Louis County but didn't know what the codes were back in the 1980's.

Marilyn Ainsworth asked how long the MoDOT sign has been up and whether the subdivision had any say in what was erected Ms. Nassif answered that it is her understanding that MoDOT designed and erected the sign without neighborhood feedback. She believes it has been up for around 10 years.

Petitioner's Presentation:

Mr. Stuart Lindley was sworn in by the Court Reporter.

Mr. Lindley, 15979 Meadow Drive, Chesterfield, MO stated the following:

- He is a trustee for the Clarkson Woods subdivision.
- When the subdivision was built, the larger monument signs were erected to be mirror images at each of the two entrances to the subdivision. While widening Clarkson Road in 1996-1997, MoDOT took approximately 14 feet of the subdivision's common ground and removed the monument sign that was in this area.
- When the sign was removed, the neighborhood was upset about it. It was their understanding that MoDOT would put the same sign back in, only set back further. However, another sign was erected in its place.
- That sign today is about to fall over and needs to be replaced. The subdivision would like to put back what was originally there.
- Consequently, the covenants that control the height have changed from when the sign was first erected.
- The proposed sign has a column that is seven (7) feet tall and the light fixture adds an additional two (2) feet. They would like to place the monument sign up against the new boundary line, which does not interfere with the sight line.

Further discussion took place between members of the Board and the Petitioner clarifying points of his presentation.

No Speakers were present to speak in favor of the petition.

No Speakers were present to speak in opposition of the petition.

CONCLUSION

Leon Kravetz made a motion to approve the variance to permit a nine (9) foot tall subdivision monument sign in the Clarkson Woods Subdivision in lieu of the six (6) foot height restriction and for said sign to maintain a zero (0) foot setback in lieu of the required twenty (20) foot setback as established in St. Louis County

Ordinance Number 6228. The motion was seconded by **Gerald Schwalbe**. Upon roll call, the vote was as follows:

Marilyn Ainsworth	Yes
Melissa Heberle	Yes
Leon Kravetz	Yes
Gerald Schwalbe	Yes
Laura Lueking	Yes

The motion passed 5 to 0.

- A. B.A. 02-2010 14345 Gatwick Court (Harl & Karen White):** A request for a variance from City of Chesterfield Ordinance Number 2101 to permit a residential lot in the Paddington Hill Subdivision to maintain a thirteen (13) foot rear yard setback in lieu of the required fifteen (15) foot rear yard setback. (16R330518)

Staff Presentation:

Ms. Aimee Nassif, Planning & Development Services Director for the City of Chesterfield, outlined the exhibits supporting the request for a variance to permit 14345 Gatwick Court in the Paddington Hill Subdivision to maintain a thirteen (13) foot rear yard setback in lieu of the required fifteen (15) foot rear yard setback.

Ms. Nassif gave a PowerPoint presentation showing photos of the site and stated the following:

- Staff would be presenting B.A. 02-2010 and B.A. 03-2010 together since they are attached residential units. Both property owners had requested building permits for construction of decks but were rejected by the Department of Planning and Public Works because they encroached in the rear yard setbacks.
- Both petitions are requesting to maintain a 13 foot setback in lieu of the 15 foot rear yard setback requirement. The posts and the bases of the proposed decks do not encroach but the cantilevers would be in the rear yard setback.
- In addition to the 15 foot rear yard setback, there is a 20 foot general utility easement for these lots. If the setback is approved, the applicants will be required to seek approval from each of the utilities that maintain rights in order to use the easement before they can construct.

Laura Lueking noted that the petitions would be read and voted upon separately.

Petitioner's Presentation:

Mr. Harl White was sworn in by the Court Reporter.

Mr. White, 14345 Gatwick Court, Chesterfield, MO stated the following:

- The yard is not very useable because of its steep grade. There is very little useable space to enjoy the outdoor area since there is only a small stoop out

front of the villa home, which is not large enough for outdoor furniture. The proposed deck will be the only useable outdoor space.

- They are asking to overhang the deck two (2) feet into the easement. The deck is approximately 12 to 14 feet above the easement.
- They feel the size of the deck is appropriate to the home, and would accommodate patio furniture, a glider, a grill and still have room to walk around.
- They and the Gatheman's have contracted with the same deck builder and are using the same high grade materials to maintain an upscale community-type environment and to increase the property value.
- There is common ground and a retention pond behind them so the deck would not encroach on anyone.

During discussion the following points were clarified:

- The petitioners have lived at their home for two months.
- A deck was planned since they contracted with McBride and Son and were told there would be no problem building one even with encroaching two feet into the easement.
- The sales agent who spoke to them about building a deck was directly employed by McBride and Son.
- The petitioners have future plans of putting a patio underneath the deck.

Laura Lueking expressed concern about other homeowners from this development asking for variances to build decks. Ms. Nassif stated that Staff has spoken to the Developer regarding this issue. The builder has already resurveyed the remaining lots and they believe that decks can be built on these lots without a variance.

Speakers – In Favor:

Ms. Jeannie Aumiller was sworn in by the Court Reporter.

Mr. Nick Liuzza was sworn in by the Court Reporter.

Ms. Aumiller, Associate General Counsel, McBride & Son, #1 McBride & Son Center Drive, Chesterfield, MO stated the following:

- She is speaking in favor of both B.A 02-2010 and B.A. 03-2010.
- They have analyzed all of the lots in the subdivision and it has been determined that a reasonably-sized deck can be built on them with the exception of the four lots that have requested variances.
- One of the items they are accustomed to seeing on a plat is the rear yard setback, which was not shown. This may have caused some of the miscommunication, with respect to the White's and Gatheman's homes. The only notification on the plat is a 250 foot structure setback. The 15 foot rear yard setback appears in the zoning ordinance.

Mr. Nick Liuzza, Project Manager for McBride & Son, #1 McBride & Son Center Drive, Chesterfield, MO agreed that there was a miscommunication from the builder. He noted

that there is a 15 foot catch-all utility easement that runs behind the subject properties. Originally when their sales representative spoke to the petitioners, McBride and Son was under the impression that as long as they had the encroachment agreements from the utility contractors, they would be allowed to encroach upon that easement. There are no utilities that run through that easement to the best of his knowledge. They were also under the impression that the 250 foot structure setback was the only setback that pertained to those lots and not the 15 foot rear yard setback.

Speakers-In Opposition:

No Speakers were present to speak in opposition of the variance request.

CONCLUSION

Leon Kravetz made a motion to approve the variance to permit 14345 Gatwick Court in the Paddington Hill Subdivision to maintain a thirteen (13) foot rear yard setback in lieu of the required fifteen (15) foot rear yard setback. The motion was seconded by Marilyn Ainsworth. Upon roll call, the vote was as follows:

Marilyn Ainsworth	Yes
Melissa Heberle	Yes
Leon Kravetz	Yes
Gerald Schwalbe	Yes
Laura Lueking	Yes

The motion passed 5 to 0.

- B. B.A. 03-2010 14349 Gatwick Court (Robert & Kathryn Gatheman):** A request for a variance from City of Chesterfield Ordinance Number 2101 to permit a residential lot in the Paddington Hill Subdivision to maintain a thirteen (13) foot rear yard setback in lieu of the required fifteen (15) foot rear yard setback. (16R340472)

Staff Presentation:

Ms. Aimee Nassif, Planning & Development Services Director for the City of Chesterfield, outlined the exhibits supporting the request for a variance to permit 14349 Gatwick Court in the Paddington Hill Subdivision to maintain a thirteen (13) foot rear yard setback in lieu of the required fifteen (15) foot rear yard setback.

Ms. Nassif stated the following:

- This petition also has a rear yard setback requirement of 15 feet with a general utility easement beyond that. The petitioner will have to obtain approval from the subject utility companies prior to seeking approval from the City of Chesterfield if the setback variance is granted.

- For informational purposes, flatwork - such as the addition of a patio - does not require a permit from St. Louis County. There will not be an issue with a patio being constructed on this lot.

Petitioner’s Presentation:

Mr. Bob Gatheman was sworn in by the Court Reporter.

Mr. Gatheman, 14349 Gatwick Court, Chesterfield, MO stated the following:

- His situation is very similar to the White’s. The only difference is his deck proposal is smaller.
- The rear of his property is 6.42 feet from the setback. He is asking for a 10 foot cantilever, which would give him a reasonably sized eight (8) foot deck.
- It would be a hardship to have a deck as small as six (6) feet wide in order to accommodate a table, chairs and a grill with room to manipulate around.

In response to questions from Mr. O’Rourke, Mr. Gatheman confirmed that he was present during the previous testimony for the White’s property and that he is adopting the testimony which referred to his property as part of his own testimony.

As a point of clarification, Laura Lueking stated that even though the White’s deck is larger, the houses will still appear flush when looking at the back of the houses because the Gatheman’s house goes deeper on the lot.

Speakers – In Favor:

As a point of clarification, Mr. O’Rourke noted that the representatives of McBride & Son had spoken in favor of this Application for a Variance in their previous testimony. Ms. Aumiller confirmed that they adopt that testimony for this petition.

No Speakers were present to speak in opposition of the variance request.

CONCLUSION

Leon Kravetz made a motion to approve the variance to permit 14349 Gatwick Court in the Paddington Hill Subdivision to maintain a thirteen (13) foot rear yard setback in lieu of the required fifteen (15) foot rear yard setback. The motion was seconded by Marilyn Ainsworth. Upon roll call, the vote was as follows:

Marilyn Ainsworth	Yes
Melissa Heberle	Yes
Leon Kravetz	Yes
Gerald Schwalbe	Yes
Laura Lueking	Yes

The motion passed 5 to 0.

Before presenting the 3rd and 4th petitions, Laura Lueking stated for the record that she used to do sales and marketing for McBride and Son and would therefore be abstaining from voting on the next two petitions.

- C. B.A. 04-2010 613 Paddington Hill Drive (McBride Paddington Hill LLC):** A request for a variance from City of Chesterfield Ordinance Number 2101 to permit a residential lot in the Paddington Hill Subdivision to maintain a twelve (12) foot rear yard setback in lieu of the required fifteen (15) foot rear yard setback. (16R321152)

Staff Presentation:

Ms. Aimee Nassif, Planning & Development Services Director for the City of Chesterfield, outlined the exhibits supporting the request for a variance to permit 613 Paddington Hill Drive in the Paddington Hill Subdivision to maintain a twelve (12) foot rear yard setback in lieu of the required fifteen (15) foot rear yard setback.

Ms. Nassif gave a PowerPoint presentation showing photos of the site and stated the following:

- B.A. 04-2010 and B.A. 05-2010 are being presented together but the speakers and votes will be separate.
- The petitioners for 613 Paddington Hill are seeking a 12 foot rear yard setback, in lieu of the 15 foot rear yard setback in order to construct a deck.
- Their application for a building permit was rejected by the Department of Planning and Public Works due to the encroachment into the setback.
- There are no easement issues with these two units.

Petitioner's Presentation:

Ms. Jeannie Aumiller was sworn in by the Court Reporter.

Ms. Aumiller, Associate General Counsel for McBride & Son, #1 McBride and Son Center Drive, Chesterfield, MO introduced Exhibit 7 into the record, which is a copy of the record plat for Paddington. She then gave a brief summary of the subdivision history stating that McBride Paddington Hill constructs homes in the subject subdivision. The subdivision was originally developed by Greater Missouri Builders, who built three homes. The lots were subsequently owned by Commerce Bank and McBride Paddington Hill, LLC is now acquiring the remaining 24 lots from Commerce Bank. Ms Aumiller then went on to state the following:

- The subject petitions (Lots 23 and 24) have the two most shallow lots in the subdivision.
- They have determined that the remaining lots in the subdivision will not need variances to construct reasonably-sized decks. Only Lots 23 and 24 need variances.
- Lot 24 (613 Paddington Hill Drive) is the second most shallow lot in the subdivision and has an irregular lot line.

- Lot 24 has an established 15-foot rear yard setback, is approximately 104-105 feet deep and backs to one of the deepest lots in the subdivision (Lot 22).
- Lot 24 is a walk-out and with a walk-out, a deck is necessary to get proper ingress and egress for the main level of the home to enjoy the rear yard.

Ms. Aumiller went through the approval criteria outlined in the Staff Report noting the following points:

- The applicant did not bring the burden upon himself through his own action: Lot 24 is the second most shallow lot in the subdivision and is too shallow to accommodate a standard-sized deck. The physical dimensions and walk-out grade of the lot were not created by McBride and Son - they were created by the previous Developer. McBride and Son is not exasperating the situation by placing a large product on a shallow lot.
- The rear lot line is an irregular shape in that it converges on itself in the middle of the lot. Strict application of the rear yard setback in this instance would deprive McBride and Son and the future owner, who is under contract, the use of the deck.
- The use of a deck may be enjoyed by nearly all other homeowners in Paddington because of the depth of the remaining lots.
- The physical dimensions of Lot 24 create a unique physical hardship, which will deprive McBride and Son and the future homeowner of the use of a deck. The walk-out nature of the lot dictates the construction of a deck and stairs.
- The requested variance will not impact public safety and welfare.
- The variance will not adversely affect or impair the property values within the neighborhood but will enhance the property values by providing an invaluable outdoor feature.

Ms. Aumiller concluded that the 4 lots before the Board this evening are the only 4 lots that need a variance to accommodate a reasonable-sized deck. The Homeowners Association supports this request for a variance.

The following exhibits were introduced into the record:

- Exhibit 8 - a poster board showing lots and plans of the subdivision
- Exhibit 9 - a poster board of Lot 24 showing the layout of the house, the proposed deck, the proposed encroachment and elevations

If the variances are granted, Laura Lueking wanted to clarify that the sales people for McBride and Son are made aware of what the setbacks are on every lot. Ms. Aumiller said it was noted and will be addressed with the homeowners going forward.

No Speakers were present to speak in favor of the variance request.

No Speakers were present to speak in opposition of the variance request.

CONCLUSION

Leon Kravetz made a motion to approve the variance to permit 613 Paddington Hill Drive in the Paddington Hill Subdivision to maintain a twelve (12) foot rear yard setback in lieu of the required fifteen (15) foot rear yard setback. The motion was seconded by Marilyn Ainsworth. Upon roll call, the vote was as follows:

Marilyn Ainsworth	Yes
Melissa Heberle	Yes
Leon Kravetz	Yes
Gerald Schwalbe	Yes
Laura Lueking	Abstained

The motion passed 4 to 0 with one abstention.

- C. B.A. 05-2010 617 Paddington Hill Drive (McBride Paddington Hill LLC):** A request for a variance from City of Chesterfield Ordinance Number 2101 to permit a residential lot in the Paddington Hill Subdivision to maintain a ten (10) foot rear yard setback in lieu of the required fifteen (15) foot rear yard setback. (16R311351)

Staff Presentation:

Ms. Aimee Nassif, Planning & Development Services Director for the City of Chesterfield, outlined the exhibits supporting the request for a variance to permit 617 Paddington Hill Drive in the Paddington Hill Subdivision to maintain a ten (10) foot rear yard setback in lieu of the required fifteen (15) foot rear yard setback.

Ms. Nassif stated the following:

- Lot 23 (617 Paddington Hill Drive) is seeking a ten (10) foot rear yard setback in lieu of the 15 foot rear yard setback in order to construct a deck.
- Their application was rejected by the Department of Planning and Public Works due to the encroachment into the setback.

Petitioner's Presentation:

Ms. Jeannie Aumiller was sworn in by the Court Reporter.

Mr. Nick Liuzza was sworn in by the Court Reporter.

Ms. Aumiller, Associate General Counsel for McBride & Son, #1McBride & Son Center Drive, Chesterfield, MO stated that with the Board's approval and consent she would like to adopt her previous testimony with a few small differences to save time. Mr. O'Rourke granted consent.

Ms. Aumiller then noted the following differences:

- Lot 23 is the most shallow lot in the subdivision and backs to common ground.

The following exhibits were introduced into the record:

- Exhibit 7 - the amended record plat
- Exhibit 8 - renderings showing the subdivision
- Exhibit 9 - poster board of Lot 23

No Speakers were present to speak in favor of the variance request.

No Speakers were present to speak in opposition of the variance request.

CONCLUSION

Marilyn Ainsworth made a motion to approve the variance to permit 617 Paddington Hill Drive in the Paddington Hill Subdivision to maintain a ten (10) foot rear yard setback in lieu of the required fifteen (15) foot rear yard setback. The motion was seconded by Leon Kravetz.

DISCUSSION

Gerald Schwalbe asked for clarification on the location of the 15 foot setback line, the dimensions of the deck, and its encroachment. After review of the plan, it was determined that the dimensions were in error. There is a 9.71 foot setback instead of a 10 foot setback.

Upon roll call, the vote was as follows:

Marilyn Ainsworth	Yes
Melissa Heberle	Yes
Leon Kravetz	Yes
Gerald Schwalbe	Yes
Laura Lueking	Abstained

The motion passed 4 to 0 with one abstention.

V. Election of Officers

- A. Chair**
- B. Vice-Chair**

Chair Lueking asked for nominations for the Chair of the Board of Adjustment. Leon Kravetz nominated Marilyn Ainsworth.

The motion was seconded by Gerald Schwalbe. Upon roll call, the vote was as follows:

Marilyn Ainsworth	Abstain
Melissa Heberle	Yes
Leon Kravetz	Yes
Gerald Schwalbe	Yes
Laura Lueking	Yes

The vote on the nomination of Marilyn Ainsworth as Chair of the Board of Adjustment passed by a vote of 4-0 with one abstention.

Marilyn Ainsworth accepted the position as Chair of the Board of Adjustment. Chair Lueking asked for nominations for Vice-Chair of the Board of Adjustment. Marilyn Ainsworth nominated Leon Kravetz; the nomination was seconded by Gerald Schwalbe. Upon roll call, the vote was as follows:

Marilyn Ainsworth	Yes
Melissa Heberle	Yes
Leon Kravetz	Abstain
Gerald Schwalbe	Yes
Laura Lueking	Yes

The vote on the nomination of Leon Kravetz as Vice-Chair of the Board of Adjustment passed by a vote of 4-0 with one abstention.

Leon Kravetz accepted the position as Vice-Chair of the Board of Adjustment.

VI. 2011 Proposed Meeting Schedule

Marilyn Ainsworth made a motion to accept the 2011 Meeting Schedule. The motion was seconded by Melissa Heberle and passed by a voice vote of 5-0.

VII. Adjournment

The meeting adjourned at 8:25 p.m.